



Stan Wisniewski
Director

Kerry Gottlieb
Chief Deputy

September 7, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 10 TO LEASE NO. 11525
PARCEL 75W (MARINA PROFESSIONAL BUILDING) – MARINA DEL REY
(FOURTH DISTRICT)
(4 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Amendment No. 10 to Lease No. 11525 ("Amendment") is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chairman of the Board to sign the attached Amendment (Exhibit A) which: (1) expands the use category under Section 3 of the lease to allow for the installation of wireless telecommunications and fiber optic cable apparatus; (2) provides for adjustment of square foot rental and retroactive adjustment of percentage rents for office space, pharmacy sales, and wireless antennae apparatus; (3) provides for an increase in liability insurance coverage; and (4) provides for release of the County from all liability resulting from a claim filed by the lessee in connection with its effort to obtain County's consent to a sublease for the installation and operation of rooftop wireless antennae.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

All Marina del Rey leases provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests. County rents are typically computed as the greater of either a fixed minimum rent or the total of varying percentages of the lessee's gross receipts from the leasehold's use.

The lease terms of Parcel 75W require adjustment of rents, as defined therein, on September 1, 1997, and every tenth anniversary thereafter. The County and lessee were previously unable to complete the 1997 rental adjustments due to a dispute relating to the current fair market levels for percentage rents relating to office rentals and pharmacy sales. In order to resolve the dispute, and pursuant to Section 15 of the Lease, a retired judge was appointed to arbitrate the dispute. Pursuant to the arbitration decision, the following office rental and pharmacy sales rates will apply for the period September 1, 1997 through August 31, 2007. The percentage rate for the telecommunication related uses was negotiated with the lessor and is significantly higher than prevailing rates for similar uses.

CATEGORY	CURRENT RATE	PROPOSED RATE	FROM	TO
Office rentals	11%	11% 12%	9/1/1997 9/1/2002	8/31/2002 8/31/2007
Pharmacy sales	1.5%	2.5%	9/1/1997	8/31/2007
Wireless telecommunications and fiber optic cable (New)	N/A	50%	9/1/1997 (See Note)	8/31/2007

Note: Lessee has a pre-existing sublease for wireless antennae atop the roof of its building and, due to the lack of an appropriate lease category, has been reporting the associated gross receipts under category (f), service enterprises, at 5%. Lessee has agreed to pay the new rate for all new subleases for wireless communications but will continue to pay at the rate of 5% for the existing sublease during its term.

The Amendment also provides that the minimum rent will henceforth be adjusted on September 1st of every third year, as measured from the 1997 Rental Adjustment Date, to an amount equal to 75% of the average annual rent payable by the lessee to the County over the prior three years.

The lessee has also agreed to increase the commercial general liability insurance to a combined single limit of not less than \$5 million, up from the existing \$3 million combined single limit. Such limits have been approved by the County's Office of Risk Management.

Finally, the lessee filed a claim for damages against the County alleging that it would suffer a loss of \$487,114.50 in revenue should the County fail to approve lessee's proposed sublease with a telecommunication carrier for rental of the premise's rooftop for installation and operation of wireless communications apparatus. As the result of negotiation, the lessee has agreed to release the County from the claim and pay the County rent equal to 50% of gross revenues it will receive from the proposed and all prospective wireless antennae subleases that are entered after the Amendment, but will continue to pay 5% of gross revenues for the remainder of the term of an existing sublease. The anticipated increase in revenues to the County for the proposed wireless sublease will be in excess of \$108,000 for the initial 10-year term of the sublease and potentially over \$344,000 if all the options to the sublease are exercised. Upon execution of the Amendment, the County is released from any and all liability under the claim.

Implementation of Strategic Plan Goals

This recommendation is consistent with the County's Strategic Plan Goal of "Fiscal Responsibility." The County will realize additional revenues, avoid having to incur legal defense expenditures, and be forever released from any potential liabilities from the lessee's claim.

FISCAL IMPACT/FINANCING

Total rent from the leasehold in calendar year 2003 was \$152,055. The annual rent due the County after the execution of the Amendment is projected to be approximately \$194,768, an annual increase of more than \$42,700. The proposed wireless sublease, if approved, will result in an additional rent of more than \$10,000 per year to the County during its first 10-year term.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Parcel 75W, commonly known as Marina Professional Building, is improved with a three-story medical office building consisting of 39,050 gross building area and a free-standing pharmacy building consisting of 1,134 square feet. The leasehold currently occupies 52,026 square feet of land in Marina del Rey. The 60-year ground lease between the County and lessee was executed in 1966.

The lessee has paid all past amounts due as a result of the arbitration decision, as well as any interest thereon, and is current in its rental payments to County. All other categories of percentage rents applicable to the lease remain unchanged and do not generate a meaningful amount of revenue.

This Amendment has been approved as to form by County Counsel. At its meeting of July 14, 2004, the Small Craft Harbor Commission endorsed the Director's recommendation that your Board approve and execute the proposed Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment is categorically exempt under provisions of the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the renegotiated rental adjustments will increase the annual rents due the County and provide additional liability insurance coverage.

CONCLUSION

Please have the Chairman of the Board sign all four attached copies of the Amendment and have the Executive Officer acknowledge the Chairman's signature. Please send two executed copies to the Department of Beaches and Harbors, along with an executed copy of this Board letter, and one copy to County Counsel.

Respectfully submitted,

Stan Wisniewski

Stan Wisniewski, Director

SW:KS:RM:PW:be

Attachment (1)

c: Chief Administrative Officer
Executive Officer, Board of Supervisors
County Counsel

AMENDMENT NO. 10 TO LEASE NO. 11525

PARCEL NO. 75W—MARINA DEL REY

THIS AMENDMENT TO LEASE is made and entered into this _____ day of _____, 20____ (the "Effective Date"),

BY AND BETWEEN

**COUNTY OF LOS ANGELES,
hereinafter referred to as
"County",**

AND

**DEL REY PROFESSIONAL
ASSOCIATION, a general
partnership, hereinafter referred
to as "Lessee."**

WITNESSETH:

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 11525 under the terms of which County leased to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 75, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 3 of said Lease provides that the Premises shall be used only and exclusively as offices for the practice of medicine and dentistry, laboratories and other facilities associated with the practice of medicine and dentistry, and as offices for the practice of other professions; and

WHEREAS, the parties have agreed to amend Section 3 to permit the installation of apparatus for wireless telecommunications and/or fiber optic cable on the Premises; and

WHEREAS, the parties have also agreed to amend Section 13 of said Lease to establish the percentage rental rate applicable to gross receipts collected by Lessee from subleases for rental of Premises for installation of apparatus for wireless telecommunications and fiber optic cable, with exception to an existing sublease to which gross receipts subsection (s) shall apply; and

WHEREAS, Section 15 of said Lease provides that as of September 1, 1987, and as of September 1st of every tenth (10th) year thereafter (the "Rental Adjustment Date"), the square foot rental and percentage rentals, and liability insurance limits (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, Section 15 further provides that such readjustments shall be accomplished by agreement of the parties and in the event such agreement cannot be reached, the readjustments shall be settled by submission of the issue to a single retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any Federal District Court or Court of Appeals, in the manner set forth at length in said Section 15; and

WHEREAS, the parties have agreed to adjust the square foot rental for the ten-year period commencing on September 1, 1997 (the "1997 Rental Adjustment Date"); and

WHEREAS, the parties were unable to reach agreement regarding the proper adjustments to be made to the percentage rentals for the ten-year period commencing on the 1997 Rental Adjustment Date; and

WHEREAS, a duly appointed single retired judge has rendered his opinion regarding the Adjusted Rentals to be implemented as of the 1997 Rental Adjustment Date; and

WHEREAS, Section 26 of the Lease provides that the amounts of casualty insurance required to be maintained by Lessee shall be subject to renegotiation at the same time and in the same manner as the amounts of rent under the Lease; and

WHEREAS, the parties have reached agreement with respect to the amount of casualty insurance required to be maintained by Lessee for the ten-year period commencing on the 1997 Rental Adjustment Date; and

WHEREAS, Lessee filed a Claim for Damages to Person or Property ("Claim for Damages") against the County in connection with Lessee's attempt to obtain consent to sublease for the installation of apparatus for wireless telecommunications and fiber optic cable; and

WHEREAS, Lessee has agreed to withdraw its Claim for Damages against the County and release County from any potential damages and liability arising therefrom;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. **Purpose or Use of Property.** Commencing as of the 1997 Rental Adjustment Date, the first paragraph of Section 3 (PURPOSE OR USE OF PROPERTY) of said Lease is amended to read as follows:

"The leased premises shall be used only and exclusively for construction, operation and maintenance of an office building, which may include offices for the practice of medicine and dentistry; laboratories and other facilities commonly associated with the practice of medicine and dentistry; and, at the option of the Lessee, offices for the practice of other professions such as but not limited to law, engineering, and architecture; and, at the option of the Lessee and with prior written approval of County, apparatus for wireless telecommunications and fiber optic cable, and such other related uses and purposes incidental thereto as are specifically approved and for no other purposes whatsoever without the written approval of County; the uses and purposes above listed are set forth to define the maximum contemplated scope of permissible uses and purposes, and their enumeration is not intended to be authorization for any specific use or purpose."

2. **Square Foot Rental.** Commencing as of the 1997 Rental adjustment Date, the first paragraph of Section 12 (SQUARE FOOT RENTAL) of said Lease is amended to read as follows:

"Effective September 1, 1997 and every three years thereafter, the annual square foot rental for the whole of the Premises shall be readjusted to equal seventy-five percent (75%) of the annual average of all rents payable by the Lessee under Section 13 of the Lease for the immediately preceding three-year period, provided that no adjustment shall result in a decrease of the square foot rental."

3. **Percentage Rental.** Commencing as of the 1997 Rental Adjustment Date, subsections (c), (f) and (t) of Section 13 (PERCENTAGE RENTALS) are deemed deleted and the following subsections (c), (f) and (t) are correspondingly substituted therefor:

"(c) (i) SEVEN AND ONE-HALF PERCENT (7.5%) of gross receipts or other fees charged for the occupancy of structures and other facilities other than Offices, such as (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, (5) rental of land and/or water or facilities for activities not otherwise provided for in this Section such

as but not limited to television and/or motion pictures, and (6) parking fees or charges except where such parking fees or charges are collected in conjunction with an activity, the gross receipts from which are required to be reported in a percentage category greater than SEVEN AND ONE HALF PERCENT (7.5%).

"(ii) ELEVEN PERCENT (11%) [for the period from September 1, 1997 through August 31, 2002] and TWELVE PERCENT (12%) [for the period from September 1, 2002 and thereafter] of gross receipts or other fees charged for the occupancy of offices utilized for banking, financial or investment activities, internal clerical or administrative activities of business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, or similar professional services (collectively, "Offices"), but not to include, however, stores, shops or other commercial establishments, the gross receipts pertaining to which are subject to percentage rentals and specifically required to be reported under other subsections of this Section.

"(f) FIVE PERCENT (5%) of gross receipts received by Lessee or sublessee or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee from service enterprises; FIFTY PERCENT (50%) of gross receipts received by Lessee from rental of Premises for installation of apparatus for wireless telecommunication facilities or fiber optic cable, except that, commencing as of the Effective Date, the gross receipts collected by Lessee from its sublease with Cox PCS Assets, LLC (the "Cox Sublease"), covering those specific wireless telecommunication facilities that were approved by the Marina del Rey Design Control Board in October 2000, shall be reported under subsection (s) during the remaining term of said sublease, including any optional terms provided for therein. Any material modification or amendment made to the Cox Sublease shall cause it to be considered a new wireless telecommunication sublease and the gross receipts thereof shall be reported under category (f) at the rate of FIFTY PERCENT (50%). A material modification is deemed to have been made if it expands the physical dimensions of the existing facility, lengthens the term of the sublease, creates a new agreement or modifies an existing agreement so that a new third party, not a successor in interest to the existing tenant, will have the use of the facilities, whether such an agreement be called a sublease, sublicense, an indefeasible right to use, or by any other names. For the purpose of this paragraph only, modifications such as upgrading of facilities to meet technological advancement or regulatory requirements, shall not be considered a material modification, provided that they do not expand the physical dimensions of the existing facility.

"(t) TWO AND ONE-HALF PERCENT (2.5%) of gross receipts from pharmacy sales."

4. **Reconciliation Rent.** The amount owed by Lessee to County representing the difference between (i) the actual rents paid by Lessee under the rental rates in effect prior to the effectiveness of this Lease Amendment from the 1997 Rental Adjustment Date to the Effective Date and (ii) the sum which is calculated to be due for rental rates from the 1997 Rental Adjustment Date to the Effective Date based upon the rental adjustments set forth in this Lease Amendment ("Reconciliation Rent") shall be paid by Lessee to County within ten (10) days following the Effective Date.

5. **Indemnity Clause and Casualty Insurance.** Commencing as of the Effective Date, the liability insurance limit shall be no less than a combined single limit of \$5,000,000, or such greater amount as may be required by any holder of an encumbrance on the Premises, which has been approved in accordance with Section 22 of the Lease. The County and the Board of Supervisors, their officers, agents and employees shall be named as additional insureds under such liability insurance policy or policies.

6. **Release.** By execution of this Amendment, Lessee hereby withdraws its Claim for Damages filed with the County in connection with its attempt to obtain County consent to a sublease for installation of a wireless telecommunications and fiber optic cable, and releases and forever discharges the County and any and all of its departments, divisions, elected officials, employees and agents who are or may ever become liable to Lessee of and from any and all claims, demands, damages, actions and causes of action of every kind, known or unknown, arising out of or in any way connected with the allegations set forth in its Claim for Damages, and hereby waives all rights under California Civil Code Section 1542, relating to or arising from said allegations, which Lessee represents and warrants it has read, and understands the meaning and effect of its waiver of the rights thereunder.

7. **Miscellaneous.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chairman of said Board and attested by the Executive Officer thereof, and the Lessee has executed the same.

LESSEE:

DEL REY PROFESSIONAL ASSOCIATION,
a general partnership,

ORIGINAL SIGNED

By: _____

Its: _____

By: _____

Its: _____

COUNTY:

By: _____
Chairman, Board of Supervisors

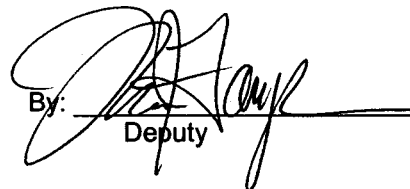
ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the
Board of Supervisors

APPROVED AS TO FORM:

OFFICE OF THE COUNTY COUNSEL

By: _____
Deputy

By:  _____
Deputy